

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

H.GLENN HUDDLESTON  
Plaintiff,

VS.

THE DIAMOND SUPPLIER.COM, LLC  
and ALBERT S. SMYTH CO., INC  
Defendants.

§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 5:19-cv-193

**PLAINTIFF'S ORIGINAL COMPLAINT**

To the Honorable Judge of the Court:

This is a suit to collect unpaid rent on a commercial lease and guarantee agreement.

Parties

1. H. GLENN HUDDLESTON, Plaintiff, and Landlord under the Lease Agreement in question, is a resident of San Antonio, Bexar County, Texas.

2. Defendant THE DIAMOND SUPPLIER.COM, LLC, ("DIAMOND") is a Maryland limited liability company with its principal place of business in Maryland; and it is qualified to do business in Texas and has engaged in business in Texas. DIAMOND is subject to service of process in this action pursuant to the Texas long-arm statute, Texas Civil Practices and Remedies Code, Section 17.042. DIAMOND contracted with a Texas resident that required DIAMOND's contractual performance in Texas. DIAMOND does not maintain an agent for service in Texas, and as a result, is amenable to process through the Secretary of State, pursuant to Texas Civil Practices and Remedies Code, 17.044. DIAMOND may be served with process through service upon the Secretary of State of the

State of Texas, which should forward the process to DIAMOND'S principle place of business at 2020 York Road, Timonium, MD 21093.

3. Defendant ALBERT S. SMYTH, CO., INC, ("SMYTH") is a Maryland corporation with its principal place of business in Maryland; and it is qualified to do business in Texas and has engaged in business in Texas. SMYTH is subject to service of process in this action pursuant to the Texas long-arm statute, Texas Civil Practices and Remedies Code, Section 17.042. SMYTH contracted with a Texas resident that required SMYTH's contractual performance in Texas. SMYTH does not maintain an agent for service in Texas, and as a result, is amenable to process through the Secretary of State pursuant to Texas Civil Practices and Remedies Code, 17.044. SMYTH may be served with process through service upon the Secretary of State of the State of Texas, which should forward the process to SMYTH'S principle place of business at 2020 York Road, Timonium, MD, 21093.

#### Jurisdiction and Venue

4. This case is within this Court's subject matter jurisdiction on the basis of diversity of jurisdiction under 28 U.S.C. 1332. Both Defendants are non-residents who are engaged in business activities in Texas and have substantial or continuous contacts within Texas. The Plaintiff is a Texas resident. The amount in controversy exceeds \$75,000. Venue is proper in this district and division pursuant to 28 U.S.C. 1391(b)(2) because all or a substantial part of the events giving rise the claim occurred in this judicial district, the property that is the subject of the lease in question is located in this judicial district, the contracts involved were negotiated, executed, performed and breached in this judicial district.

Facts

5. H. GLENN HUDDLESTON owns a commercial building located at 213 N.W. Loop 410, in San Antonio, Texas. On or about August 27, 2013 HUDDLESTON leased approximately 3150 square feet of retail space to DIAMOND. Attached to this Complaint and marked Exhibit "A" is a true and correct copy of the Lease Agreement, and it is incorporated herein by reference for all purposes. The Lease Agreement included a 5 year term, beginning August 27, 2013, and ending August 27, 2018. The Lease set out minimum rental costs plus common area maintenance charges.

6. As part of the consideration for the execution of the Lease Agreement by HUDDLESTON, a Lease Guarantee was executed along with the Lease Agreement. The guarantor of the Lease Agreement is SMYTH, and the SMYTH guarantee was attached as an exhibit to the Lease Agreement (See exhibit "C" to the Lease Agreement). SMYTH guaranteed to honor the debts and obligations of DIAMOND that accrued under the Lease Agreement, including all rental debt under the lease, and for the 18 month period following the date of DIAMOND's default, plus attorney's fees and litigation costs.

7. HUDDLESTON performed all conditions, covenants, and duties imposed upon him by the Lease Agreement.

8. DIAMOND breached the Lease Agreement beginning July of 2015 when it stopped paying rent. On or about June 23, 2015, DIAMOND abandoned the premises and notified HUDDLESTON that it would not pay rents. HUDDLESTON had demanded payment from DIAMOND under the Lease Agreement and from SMYTH under the guarantee.

First Cause of Action: Breach of Contract

9. HUDDLESTON sues DIAMOND for breach of the Lease Agreement. HUDDLESTON seeks \$206,810 in unpaid rent, plus attorney's fees, pre-judgment interest, post-judgment interest and costs.

Second Cause of Action: Breach of Guarantee

10. HUDDLESTON sues SMYTH for breach of the guarantee agreement. HUDDLESTON seeks \$166,933 in unpaid rent beginning July 2015 and continuing for 18 months through December of 2016, plus attorney's fees, pre-judgment interest, post-judgment interest and costs.

11. All conditions precedent to the filing of this suit have been met, waived or have occurred. Plaintiff requests a trial by jury.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays as follows:

- a. that Defendants be cited in the terms of the law to appear and answer herein;
- b. that upon final hearing, and trial by jury, which is hereby demanded, that Plaintiff be awarded a judgment against Defendants in the amount of the past due rentals, plus late penalties under the Lease Agreement and the Guarantee Agreement;
- c. for both pre- and post-judgment interest on Plaintiff's recovery at the highest legal rate;
- d. that all costs of court incurred herein be taxed against Defendants;
- e. attorney's fees; and
- f. any additional damages or relief, both general and specific, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully Submitted,

THOMAS G. KEMMY  
THE KEMMY LAW FIRM  
322 West Woodlawn Avenue  
San Antonio, Texas 78212  
Telephone: (210) 735-2233  
Facsimile: (210) 736-9025  
[tkemmy@sbcglobal.net](mailto:tkemmy@sbcglobal.net)

BY: /s/ Thomas G. Kemmy  
THOMAS G. KEMMY  
State Bar No. 11254600

*ATTORNEY FOR PLAINTIFF*